IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15522 of 2003

Date of Decision: 16.3.2004

UNION OF INDIA
Versus
M B R PATEL

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the petitioner Ms.Adv.Paurami B.Sheth

Fo

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

Heard Additional Standing Counsel for Central Government Ms.Paurami B.Sheth on behalf of the petitioner and Mr.P.H.Pathak for respondent.

1. Rule. Mr.P.H.Pathak waives service of Rule on behalf of the respondent. With the consent of the advocates for the parties, the matter is taken up for final hearing and disposed of by this judgment.

Whether reporters of Local Papers may be allowed to see the Judgment?

2. Through this petition, the Union of India has challenged the order passed by the Central Administrative Tribunal, Ahmedabad Bench in O.A.No.361 / 1999 dated 5th May, 2003 whereby the Tribunal has set aside the punishment order passed by the petitioner against the respondent, on the ground that the punishment is arbitrary and based on no evidence, therefore, liable to be quashed.

The petitioner served charge sheet on the respondent. Departmental inquiry was initiated against the respondent and completed. In departmental inquiry, all six charges are found to be proved by the inquiry officer and the disciplinary authority held that Article Charge No.I, III, IV and VI are proved, whereas, Article Charge-II and V are not proved. The disciplinary authority imposed punishment on the respondent being reduction of pay of Rs.1440/- for a period of three years with effect from October 1, 1990. Precisely, it was ordered that pay of the respondent should be reduced by four stages from Rs.1600/- to Rs.1440/- in the time scale of pay of Rs.1400-2300.00 for a period of three year with effect from 1st October, 1990 and the respondent is not entitled to earn increments during the period of reduction and that on expiry of this period, reduction will have an effect of postponing his future increment of pay. This order is passed by the disciplinary authority on September 19, 1990. Against the said order, respondent filed departmental appeal which was rejected on ground of delay. After rejection of the appeal, the respondent approached the Central Administrative Tribunal by filing O.A.No.961 / 1995 wherein, the Central Administrative Tribunal directed the appellate authority to review its order by restoring the appeal to the file and hear it on merits ignoring the delay and take decision in the matter within a period of twelve weeks from the date of receipt of copy of the order and to communicate its order to the respondent within a period of two weeks. Thereafter, the appellate authority decided the appeal on merits by order dated October 10, 1996. The appellate authority considered the judgment of the Chief Judicial Magistrate, Navsari, whereby the respondent was acquitted. The appellate authority has modified the punishment considering the decision in the criminal case that of reduction of his pay by one stage from Rs.1600.00 in the time scale of Rs.1400-2300 for a period of two years with effect from October 1, 1990 with direction that he would not earn increment of pay during

the period of reduction and on expiry of this period, reduction will not postpone future increment in pay. However, there was some administrative mistake in mentioning the scale of the respondent therefore, that order has been modified by order dated 28th May, 1997. The respondent was acquitted in Criminal Case on April 27, 1993. Therefore, the respondent again filed O.A. No.361 / 1999 before the Central Administrative Tribunal, Ahmedabad Bench, allowed by vide order dated May 5, 2003, under challenge in this case.

4. Ms. Sheth, learned Additional Standing Counsel appearing for the petitioner also raised contention that the tribunal committed gross errors and its finding is contrary to the record. She also submitted that the disciplinary authority has already imposed penalty vide order dated 19th September, 1990 which has happened much prior to the decision rendered in criminal case by the Criminal Court on 27th April, 1993. She submitted that after all the appellate authority has reconsidered the matter and suitably modified the quantum of penalty, therefore, the tribunal ought not to have interfered with punishment. She also contended that standards of proof are different in criminal case and in departmental inquiry, the same standard is not required to be observed in departmental inquiry. She also submitted that the tribunal has committed error in coming to the conclusion that charge No.VI is not proved. According to her Charge-VI is proved against the respondent and excess remittence of Rs.3000/- whereas said amount was not received by the Branch Post Office or which was not available for payment of money orders. She also submitted that acquittal has no relevance but has been relied upon by the Tribunal therefore, it amounts to basic error committed by the Tribunal therefore, interference by this Court is necessary.

5. Mr. P.H.Pathak, learned Counsel submitted that Central Administrative Tribunal has rightly examined the matter in proper perspective inasmuch as acquittal of the respondent in criminal case which based on the identical set of facts, has been considered by the appellate authority and punishment modified, therefore, there is nothing wrong in the said decision, as considered by the tribunal which come to the conclusion that Charge-VI is not proved. He also submitted that the tribunal has rightly appreciated the order of the appellate authority as well as decision in criminal case. He also submitted that tribunal has rightly come to the conclusion that Charge-VI is not proved therefore, application has been allowed.

6. We have considered submissions made by the learned advocates for the respective parties, also perused the order impugned in this petition. We have also perused the decision in criminal case No.3973 / 1989 dated April 27, 1993 whereby the respondent has been acquitted under Section 248 of Cr.P.C. from the charge under Section 409 and 466-A of IPC. With the contention of the Addl. Standing Counsel Ms.Seth that there is different standard of proof between the criminal case and the departmental inquiry, there is no dispute it being settled principle of law. The Tribunal, after narrating each charge, the disciplinary authority held that Article I, III, IV and VI are proved and it held that charges under Article II and V are not proved. The appellate authority after considering the decision of the criminal Court found that charge under Article I & VI are proved, meaning thereby, Article III and IV are not proved. In respect of Article - III, the appellate authority was of the view that charge held as proved by the disciplinary authority was on presumption and with regard to Article-IV, the same is held to be not proved by the appellate authority. In respect of Article-V, the appellate authority has observed that it would be appropriate to give weitage to stand taken before the Court of Law than before the inquiry authority in departmental inquiry therefore, same accordingly held not proved. Therefore, according to the decision of the appellate authority, only Article-I and VI are proved against the respondent. Therefore, the tribunal has examined the matter further in respect of Article I and VI which are found to be proved against the respondent. The tribunal has discussed that charge against the respondent having received cash of Rs.3000/- from Head Office. The same charge was against the respondent in criminal case under Section 409 of IPC. Finding of the Criminal Court is that amount of Rs.3,000/- in excess was not remitted by the Head Office to Sub Post Office of the applicant. Said evidence is the basis for establishing charge under Article-I also. In light of this, the tribunal has considered the P & T Manual volume Rule 144[10] and come to the conclusion that once the amount of Rs.3,000.00 was not remitted by the Head Office to Kabilpore post office and therefoer, the question of non action on the part of the present respondent as per the Rules, does not arise. Therefore, according to the tribunal, Charge-I is not based upon any evidence. In respect of Article-VI, the tribunal has considered the observations made by the appellate authority and come to the conclusion that if an amount of Rs.3,000/- had been remitted to the sub post office from Head Office, then,

the said amount could have been utilised for six money orders to the tune of Rs.2615/-. Therefore, the tribunal has observed that the appellate authority has committed an error in coming to the conclusion that Charge-VI has been proved because excess remittance of Rs.3,000/whereas as has been held that above amount of Rs.3,000/was not received in the Sub Post Office, Kabilpore. Therefore, the amount in question was not available for payment on money orders and in light of the clear evidence given before the Criminal Court, Charge No.VI is held not proved. Therefore, the tribunal come to the conclusion that none of the Articles Nos.I to VI are found proved against the respondent therefore, punishment order itself is arbitrary, unjust so required to be quashed.

7. The observations made by the Tribunal in the paras-7 to 10 of the order impugned before us, which are relevant therefore, the same are referred as under :

"7. The inquiry officer found that all the charges are proved. However, the disciplinary authority held that Article-I, III, IV and VI are proved. It was further held that charge under Article II, V are not proved. It was further held that charge under Article II, V are not proved. The Appellate Authority, however, after considering the decision of the Criminal Court, found that the charge article-I and VI are proved. With the view of the disciplinary authority that it is not proved. However, with regard to charge under Article-III, the appellate authority's view is that the charge held as proved by the disciplinary authority was on presumption. With regard to charge under Article IV, the same has held to be not proved by the appellate authority. Examining the charge under Article-V, the appellate authority observed that it would be appropriate to give weigtage to stand given before the Court of law than before the inquiry authority in departmental inquiry. The same was accordingly held not proved. That in view of the appellate authority, only two charges Article-I and article VI are proved against the applicant.

8. The charge under Article-I, as has been mentioned in the preceding paragraphs was with respect to receiving excess cash of Rs.3,000/- from Head Office. It was a specific charge

against the applicant in the criminal court under Section 409 of IPC. The Criminal Court has held that the amount of Rs.3,000/- in excess was not remitted by the Head Office to the Sub Post Office of the applicant. The same evidence is the basis for establishing the charge under Article-I also. Consequently, in the light of the acquittal under Section 409 of IPC, charge under Article-I can not be held as proved. If an amount of Rs.3000/- was not remitted by the head office to the Kabilpore sub post office, the question of any non action on the part of the applicant as per the provisions of rule 144[10] of P & T Manual Vol.VI does not arise. Hence, in our view, the charge under Article-I is not based on any evidence.

9. The charge under Article-VI is with respect to making entries in the MO registered of six money orders received for payment on 1.10.1987. During the course of argument, it has been submitted that entry in the MOs register is made in respect of the money orders if the amount is available and the money order is given to the post man for disbursement. However, if MOs amount is not available, the money orders entry is not made in the MOs register as the same cannot be given for disbursement to the post man. The appellate authority in its order dated 10.10.1996 on examining this aspect has observed as below:

"As discussed earlier, the circumstantial evidence shows that be received excess remittance of Rs.3,000/- and the amount of those six MOs was Rs.2615/-. Had the amount Rs.3,000/- been credited into the Government amount, the same would have been used for payment of these MOs after obtaining the approval. If any, from the Navsari Head Office."

10. Thus, to arrive to the conclusion that charge under Article-VI was proved against the applicant, the appellate authority has taken into account the excess remittance of Rs.3,000/- whereas, as has been held above, the amount of Rs.3,000/- was not received in the Kabilpore sub post office. Hence the said amount was not available for payment on the MOs. In the light of the clear evidence given before the criminal court that the amount of Rs.3,000/- was not

remitted from the head office to Kabilpore sub post office. The charge under article-VI is held not proved."

8. Looking to the above discussion of the tribunal, we are of the opinion that when decision of the criminal court is considered by the appellate authority and relied upon for modifying the punishment in favour of the respondent, then the tribunal could also consider the said decision to appreciate the view of the appellate authority. Therefore, no wrong is committed by the tribunal in considering the decision in the criminal case and come to the conclusion that Charge-VI is not proved. It is settled law that if criminal case is pending, the departmental inquiry can be initiated unless set of facts and evidence is same. Even after completion of the criminal case and declaration of acquittal, if department intends, the department can initiate departmental inquiry. This is not the question in the instant petition before us. But the only question for consideration is that punishment which was imposed by the disciplinary authority and thereafter, the respondent declared acquittal by the Criminal Court on 27th April, 1993 in respect of Offence under Section 409 of IPC and that judgment was considered by the appellate authority and modified the punishment, whether the tribunal is competent to consider the decision of the criminal court in the present matter. According to our opinion, the tribunal is competent to deal with such matter after relying upon the decision of the criminal court and observations made therein. If allegation made against the employee in criminal case and very same allegations in departmental inquiry on the basis of the same set of facts between the parties, then the decision of the criminal court acquitting the concerned employee, becomes relevant. In such circumstances, even departmental inquiry cannot be initiated subsequently because its base is on the same set of facts having same material and witnesses to be examined against the concerned employee. The view taken by the Apex Court in case of CAPT. M. PAUL ANTHONY V. BHARAT GOLD MINES LTD AND ANOTHER reported in 1999 LAB.I.C. 1565. The relevant observations of the Apex Court are referred to as under:

"In the instant case, the Superintendent of Police had raided the residential premises of the appellant hand had recovered a mining sponge gold ball weighing 4.5 grams and 1276 grams of "gold

bearing sand". It was on this basis that criminal case was launched against him. On the same set of fact, constituting the raid and recovery, departmental proceedings were initiated against the appellant as the "recovery" was treated to be a "misconduct". On the service of charge sheet, the appellant raised an objection that the departmental proceedings may be stayed as the basis of these proceedings was the raid conducted at his residence on which basis a criminal case had already been launched against him. The findings recorded by the Inquiry Officer, indicate that the charges framed against the appellant were sought to be proved by the Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to be conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no searched was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefoer, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings, to stand."

In view of above observations and considering the facts of this case, appellate authority modified the punishment. Again, the tribunal examined the said decision in light of the observations made by the appellate authority and come to the conclusion that Article-I is not based on evidence. According to our opinion, the conclusion arrived at by the tribunal is just and proper. Similarly, in respect of the Article-VI, the tribunal has rightly concluded that if Rs.3,000.00 had credited into the Government account, it could be used for payment of money orders after obtaining approval, if any, from Navsari Head Office. Thus, even before the criminal court also, amount of Rs.3,000/- was not remitted from the Head Office to the Kabilpura Sub Post Office and therefore, Article-VI is not proved.

9. In view of our aforesaid discussion, we are of the opinion, contentions raised by Ms. Sheth, Addl. Standing Counsel cannot be accepted and the same are rejected. The matter has been rightly examined by the tribunal and order in question is clearly tenable. Therefore, we are not inclined to interfere with the order passed by the Central Administrative Tribunal. Thus, there is no substance in the present petition and the same is rejected.

Rule discharged with no order as to costs.

[Bhawani Singh]
Chief Justice

Date : 16.3.2004 [H.K.Rathod]
Judge

#kailash#